

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

April 20, 2022

Meeting Vice-Chairman Worthen called this meeting of the Tipp City Board of Zoning Appeals to order at 7:30 p.m. which was held at the Tipp City Government Center, 260 S Garber Drive, Tipp City, Ohio.

Roll Call Roll call showed the following Board Members present: Allen Worthen, Brad Andringa, Greg Bulgin, and William Schindler. City Staff in attendance included City Planner, Colin Carville and Board Secretary Dawn Gross.

Absence Mr. Andringa **moved to excuse Mr. Hartman from the meeting**, seconded by Mr. Bulgin and unanimously approved. Motion carried.

Other participants who were in attendance included: George Brown, Steve Hicks, Robin Hicks, and Tearza Current.

**Board Minutes
03-16-2022** Vice-Chairman Worthen asked for discussion. Mr. Worthen amended the minutes to read "the proposed addition will be located 5' from the northern rear property line – that should read 20'" Mr. Schindler **moved to approve the amended March 16, 2022 meeting minutes**, seconded by Mr. Bulgin. **Motion carried.** Ayes: Schindler, Bulgin, Worthen and Andringa. Nays: None.

**Citizens
Comments** There were none.

**Administration of
Oath** Mrs. Gross swore in citizens and Mr. Carville.

**Chairman's
Introduction** Vice-Chairman Worthen explained the guidelines and procedures for the meeting and public hearings. He advised the applicant(s) that any person or entity claiming to be injured or aggrieved by any final action of the BZA shall have the right to appeal the decision to the Court of Common Pleas as provided in ORC Chapters 2505 and 2506.

**New Business
Case No. 03-22
Tearza Current –
429 S Third Street –
Fence and
Transparency
Variance** **Case No. 03-22: Tearza Current – 429 S Third Street – Lot: IL 281** – The applicant is seeking the following variances: 1. A variance of 30" to the maximum height of 42" for fences placed in the front yard or along any lot line that is adjacent to a street as noted in Code 154.06(A)(4)(i)(vi)(B) for the single-family home located at 429 S Third Street. 2. A variance to the requirement that fences placed in the front yard shall be at least 50% transparent as noted in 154.06(A)(4)(i)(iii)(B).

Zoning District: R-2 – Two Family Residential

Zoning Code Section(s): 154.06(A)(4)(i)(vi)(B) & 154.06(A)(4)(i)(iii)(B)

Mr. Carville presented the following report:

The applicant requests the following:

1. A variance of 30" to the maximum height of 42" for fences placed in the front yard or along any lot line that is adjacent to a street as noted in Code §154.06(A)(4)(i)(vi)(B) for the single-family home located at 429 S Third St.
2. A variance to the requirement that fences placed in the front yard shall be at least 50% transparent as noted in §154.06(A)(4)(i)(iii)(B).

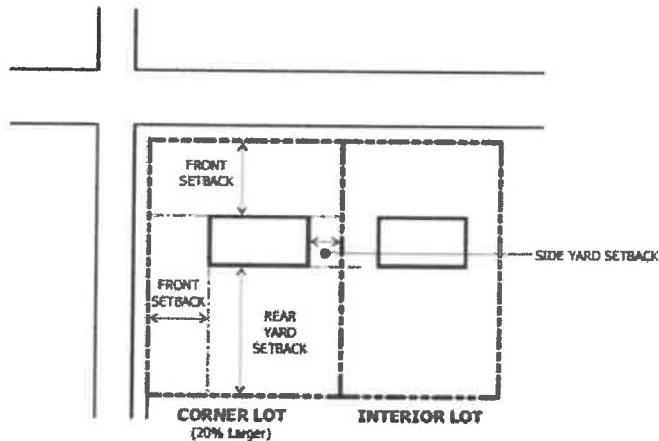
General

429 S Third St. is a 2-frontage corner lot, with frontages on S Third St. and W Elm St.

Per Code 154.04(H)(1)(d)(vi)(A):

Lots that have street frontage on two intersecting streets shall be considered a corner lot, subject to the following:

- A. The required minimum front yard setback shall be provided from each street right-of-way or, where a right-of-way is not identified, the lot line adjacent to the street. See Figure 154.04-E.



Roughly +/- 112 linear feet of the fence extend into the front yard along W Elm St. Due to the fact that the fence extends into the front street side yard, the code states that the fence must be 42".

Variance 1

A variance of 30" to the maximum height of 42" for fences placed in the front yard or along any lot line that is adjacent to a street as noted in Code §154.06(A)(4)(i)(vi)(B) for the single-family home located at 429 S. Third St.

Code § 154.06(A)(4)(i)(vi)(B) states:

(vi) *Location and Height Requirements in Residential Zoning Districts*

B. *Fences, walls, and hedges shall not exceed 42 inches in the front yard or along any lot line that is adjacent to a street.*

The privacy fence will stand 6' (i.e. 72") in height, thus a variance of 30" to Code § 154.06(A)(4)(i)(vi)(B) is required.

Variance 2

A variance to the required 50% transparency for a fence placed in the front yard as noted in Code § 154.06(A)(4)(i)(iii)(B) in conjunction with the proposed construction of a fence located at 429 S Third St. The variance is as follows:

- A variance to the 50% transparency requirement for a fence placed in the front yard according to § 154.06(A)(4)(i)(iii)(B).

Code § 154.06(A)(4)(i)(iii)(B) states:

Fencing in the front yard shall be at least 50% transparent as determined by viewing the primary face of the fence or wall. The ratio of solid fencing to open areas in the fence shall not exceed a 1-to-1 ratio.

Review Criteria §154.03(K)(4)

(4) Review Criteria

Decisions on variance applications shall be based on consideration of the following criteria:

(a) Where an applicant seeks a variance, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in practical difficulty for an area/dimensional variance as further defined below.

(b) The following factors shall be considered and weighed by the BZA to determine practical difficulty:

(i) Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;

(ii) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

(iii) Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;

(iv) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;

(v) Whether the variance would adversely affect the delivery of governmental services such as water, sewer, electric, refuse pickup, or other vital services;

(vi) Whether special conditions or circumstances exist as a result of actions of the owner;

(vii) Whether the property owner's predicament can feasibly be obviated through some method other than a variance;

(viii) Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance; and/or

(ix) Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

(c) No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

Additional Notes

- 429 S Third St. has no utility easements.
- W Elm St. is not fully developed and to be more of an alley than a street. However, it is not shown as an alley on the tax map (attachment "C").
- The privacy fence will help aid the applicant in their nonprofit organization "Our Farm Sanctuary" which fosters dogs.

Mr. Worthen asked for Board discussion, there was none.

Mr. Worthen asked the applicant to come up, state her name and address for the record and if she had anything to add to the case.

Ms. Tearza Current; 429 S Third Street, Tipp City, Ohio 45371.

Mr. Bulgin asked, "Is it reasonable to consider that without the height allowance variance, there could be the potential for the foster animals to jump these fences?"

Ms. Current responded, "The dogs that I foster come from bad home situations, or they are trying to acclimate from a disability or other medical issues." The dogs fostered are all sizes, and without knowledge of what she could be fostering in size or temperament, the privacy fence would allow them the safe space needed for re-habing.

Ms. Tearza also added, "The rear part of my property is more of an alley and not a street." There have been several occurrences where people walk/drive directly onto her property or allow their un-leashed dogs to access the property.

Mr. Worthen asked, "In your documents that you submitted, you indicated an undue hardship, how do you look at this as being a hardship?"

Ms. Current answered, "Yes, because Elm Street has no curb or sidewalk, I cannot have my friends over with small children because people will barrel through the alley very quickly, it does not allow them a safe space to be in the backyard. Also, with fostering dogs with not knowing how acclimated they are to other people or animals it can be hard for the first couple of weeks to take them for walks or take them around other people or animals. I have had an instance where another dog was allowed to approach the foster and an altercation happened. The privacy fence would, one give them someplace safe to use the restroom and also give me more opportunities to train them in a private area to get them better acclimated to being around people or animals."

Mr. Worthen clarified, "You are saying not having the higher fence is the hardship?"

Ms. Current, "Correct"

Mr. Worthen asked how much traffic she estimated coming through that area.

Ms. Current "I can see three neighbor's yards from my property and there is an alley that runs behind my garage and also to the left and I'm just guessing we have more than 20 cars go down that alley in an hour."

Mr. Andringa asked, "The other alleys you mentioned, are they City streets?"

Ms. Current replied, "No, they are just alleys."

Mr. Carville added, "Just a note, but per procedure we notify all neighbors regarding the case individually and we have not heard anything either for or against from the neighbors."

Ms. Current added, "I have spoken with several of the neighbors as well and have gotten support for the privacy fence."

Mr. Bulgin asked, "How long have you been operating at this residence in your current configuration?"

Ms. Current answered, "I don't actually operate it, I volunteer thru them and I have been doing that for about 2 years. From them, I have had 4 or 5 dogs."

Mr. Bulgin, "Have you had any incidences in the current configuration in that time frame?"

Ms. Current answered, "No."

Mr. George Brown; 975 W Evanston Road, Tipp City, Ohio.

Mr. Brown provided a brief history of the house, yard and previous owners. He is in support of the fence, because previously there was one there.

Mr. Worthen asked for Board discussion, there was none.

VARIANCE 1: Mr. Andringa moved to grant a variance of 30" to the maximum height of 42" for fences placed in the front yard or along any lot line that is adjacent to a street as noted in Code §154.06(A)(4)(i)(vi)(B) for the single family home located at 429 S Third Street, seconded by Mr. Schindler. **Motion carried.** Ayes: Andringa, Schindler, Worthen, Bulgin. Nays: None.

VARIANCE 2: Mr. Andringa moved to grant a variance to the 50% transparency requirement for a fence placed in the front yard according to §154.06(A)(4)(i)(iii)(B) for the single family home located at 429 S Third Street, seconded by Mr. Bulgin. **Motion carried.** Ayes: Andringa, Bulgin, Worthen, Schindler. Nays: None.

**Case No. 04-22
Hicks Holdings,
LLC – 320 S First
Street –
Front, Rear, and
Side yard setback
variances**

Case No. 04-22: Hicks Holdings, LLC – IL: 95, 320 S First Street, Tipp City – The applicant is seeking the following variances: 1. A variance of 26' to the required front yard setback of 50' noted in Table 154.05-9 Light Industrial-zoned property. 2. A variance of 39' to the required side yard setback of 50' noted in table 154.04-9 Light Industrial-zoned property. 3. A variance of 24' to the required rear yard setback of 50' noted in Table 154.04-9 for a Light-Industrial-zoned property.

Zoning District: LI – Light Industrial

Zoning Code Section(s): 154.04-9

Mr. Carville presented the following report:

Nature of requests:

1. A variance of 26' to the required front yard setback of 50' noted in Table 154.04-9 Light Industrial-zoned property.

2. A variance of 39' to the required side yard setback of 50' noted in Table 154.04-9 Light Industrial-zoned property.
3. A variance of 24' to the required rear yard setback of 50' noted in Table 154.04-9 for a Light Industrial-zoned property.

Background:

In December 2020, the applicant obtained a demolition permit to remove a deteriorated office that was attached to the building. The applicant hopes to improve the building by adding a warehouse/storage addition that is 46' 8" x 36' (roughly 1,692 square feet) with 2 overhead doors.

Staff Comments:

1) The applicant requests a variance of 26' from the western (front) property line with frontage on S First St. to the required front yard setback of 50' noted in Table 154.04-9 at the proposed development site of 320 S. First St.

Table 154.04-9 states that in a Light Industrial District, the front yard will have a setback of 50 feet.

The proposed development will be located 24' from the western (front) property line. Thus, a variance of 26' to the required (front yard) setback of 50' ($50' - 24' = 26'$) is needed.

2) The applicant requests a variance of 39' from the southern (side) property line to the required side yard setback of 50' noted in Table 154.04-9 at the proposed development site of 320 S. First St.

Table 154.04-9 states that in a Light Industrial District, the side yard will have a setback of 50 feet.

The proposed development will be located 11' from the southern (side) property line. Thus, a variance of 39' to the required (side yard) setback of 50' ($50' - 11' = 39'$) is needed.

3) The applicant requests a variance of 24' from the eastern (rear) property line to the required rear yard setback of 50' noted in Table 154.04-9 at the proposed development site of 320 S. First St.

Table 154.04-9 states that in a Light Industrial District, the rear yard will have a setback of 50 feet.

The proposed development will be located 26' from the eastern (rear) property line. Thus, a variance of 24' to the required (rear yard) setback of 50' ($50' - 26' = 24'$) is needed.

Review Criteria §154.03(K)(4)

(4) Review Criteria

Decisions on variance applications shall be based on consideration of the following criteria:

- (a)** Where an applicant seeks a variance, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in practical difficulty for an area/dimensional variance as further defined below.
- (b)** The following factors shall be considered and weighed by the BZA to determine practical difficulty:
 - (i)** Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;
 - (ii)** Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
 - (iii)** Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
 - (iv)** Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
 - (v)** Whether the variance would adversely affect the delivery of governmental services such as water, sewer, electric, refuse pickup, or other vital services;
 - (vi)** Whether special conditions or circumstances exist as a result of actions of the owner;
 - (vii)** Whether the property owner's predicament can feasibly be obviated through some method other than a variance;
 - (viii)** Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance; and/or
 - (ix)** Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.
- (c)** No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

Additional Notes

- The previous office that was demolished had a square footage size of 1,040.
- The applicant is the owner and responsible for the restoration and improvement to the Mauk Cabinets by Design building.
- The applicant believes the approval of the variances will make it a viable space within the zoning classifications, geared toward attracting potential tenants. This renovation and improvements will help enhance the old industrial part of Tipp City.
- There are no utility easements for this property.

Mr. Worthen asked if there had been any neighbor comments.

Mr. Carville responded, "No, there has not been."

Mr. Andringa asked, "Is there anything stated in the Municipal Code what the intended purposes of the 50' setback?"

Mr. Carville answered, "This would be a buffer. Normally Light Industrial properties are not very easy on the eye, they are preferred to be in a big open space so they are not encroaching on others."

Mr. Schindler asked, "The existing building does not meet the Code right now, is that correct?"

Mr. Carville responded, "Yeah, it is grandfathered in. That is why there front setback is already pretty close."

Mr. Bulgin asked, "Am I correct, the only properties abutting the place at issue are also zoned light industrial?"

Mr. Carville said, "Correct. If you look at the zoning map, everything on the right side is light industrial. It just barley grazes the residential area to the southwest."

Mr. Worthen asked the applicant to come forward and state his name and address for the Board.

Mr. Steve Hicks; 1240 Hazeldean Court, Troy, Ohio 45373

Mr. Hicks began, "I am asking for the approval of the variance. This old building is an old very heavy block structure. What we tore down was a leaky deteriorating frame structure. It is not viable for us to rent this to any potential tenants because of the size. We need more storage space. We are planning to make a sizable investment in this property. It will be beautiful when we are done."

Mr. Bulgin asked, "In terms of the lighting, is it a substantial amount of light fixtures that could potentially impact any of the residential buildings?"

Mr. Hicks responded, "No, not at all. We have existing lighting on the building for security only."

Mr. Worthen asked, "The front of the addition, is that going to be right in line with the current building too?"

Mr. Hicks answered, "No, it is setback quite a bit."

Mr. Andringa asked, "Will this effect parking?"

Mr. Hicks said, "I don't think so because it is such a small structure. We have eliminated the handicapped parking sign because it used to be the Tipp City Seniors Building."

Mr. Worthen asked if anyone in the office would like to speak on the case, no one came forward.

Mr. Worthen asked for Board Member discussion, there was none.

VARIANCE 1: Mr. Schindler moved to grant a variance of 26' to the required (western front yard) setback of 50' noted in Table 154.04-9 in conjunction with the construction of an addition at 320 S First Street, seconded by Mr. Bulgin. Motion carried. Ayes: Schindler, Bulgin, Andringa, Worthen.

VARIANCE 2: Mr. Schindler moved to grant a variance of 39' to the required (southern side yard) setback of 50' noted in Table 154.04-9 in conjunction with the construction of an addition at 320 S. First Street, seconded by Mr. Bulgin. Motion carried. Ayes: Schindler, Bulgin, Worthen, Andringa.

VARIANCE 3: Mr. Schindler moved to grant a variance of 24' to the required (eastern rear yard) setback of 50' noted in Table 154.04-9 in conjunction with the construction of an addition at 320 S. First Street, seconded by Mr. Bulgin. Motion carried. Ayes: Schindler, Bulgin, Worthen, Andringa.

Old Business

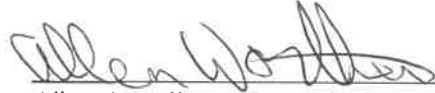
There was none.

Miscellaneous

There was none.

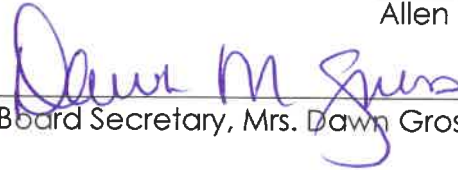
Adjournment

There being no further business, Mr. Worthen **moved to adjourn the meeting**, seconded by Mr. Andringa and unanimously approved. **Motion carried.** Vice-Chairman Worthen declared the meeting adjourned at 8:04 p.m.



Allen Worthen, Board Vice-Chairman

Attest:



Board Secretary, Mrs. Dawn Gross